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E.O. 12958: DECL: 06/04/2019
TAGS: MARR PARM PREL KTIA RS
SUBJECT: JDEC/PLNS NON-PAPER: "RARE EXCEPTIONS" FOR
BALLISTIC MISSILE LAUNCHES

REF: STATE 050903

Classified By: Classified By: ISN Acting DAS Ann Ganzer,
Reason E.O. 12958 1.4 (b) and (d)

¶1. This is an action request. See paragraph 3.

¶2. (C) SUMMARY. On May 28, 2009, in Moscow, a U.S. interagency delegation led by Ambassador Stephen Mull met with a Russian interagency delegation chaired by Deputy Foreign Minister Sergey Ryabkov. The agenda focused on bilateral ballistic missile defense (BMD) cooperation as well as U.S.-Russia Joint Data Exchange Center (JDEC) issues. During the course of the JDEC discussion the issue of "rare exceptions" for not reporting and not notifying certain ballistic missile launches was discussed. Ambassador Mull explained the U.S. position that both the United States and Russia may require the flexibility on rare occasions to protect information related to certain ballistic missile launches for national security reasons. Ambassador Mull gave some examples of "rare exception" ballistic missile launches.

The U.S. delegation said that the extension of "rare exceptions" to ballistic missile launches under the JDEC Memorandum of Agreement and the PLNS Memorandum of Understanding would not change U.S. or Russian obligations under the 1988 Ballistic Missile Launch Notification Agreement and that this agreement is of unlimited duration. The U.S. delegation also said that the United States would never exercise the "rare exceptions" provision in the case of a ballistic missile launched in the direction of Russia that could potentially be misinterpreted as a hostile launch. Embassy should explain that the U.S. Non-Paper responds to DFM Ryabkov's request of the U.S. to provide its rationale for "rare exceptions" in writing in a non-paper for the Russian Federation to consider. (Full reporting on this meeting to be provided septel.)

¶3. (SBU) ACTION REQUEST: Embassy Moscow is requested to convey the U.S. non-paper in paragraph 4 to Deputy Foreign Minister Ryabkov, Ministry of Foreign Affairs, and/or other appropriate MFA officials, as well as Col. Yevgeniy Il'in, Main Directorate of International Military Cooperation, Ministry of Defense. Post is requested to provide confirmation of delivery and to report back to Washington any initial reactions.

¶4. (S/REL RUSSIA) BEGIN TEXT OF NON-PAPER:

U.S. JDEC/PLNS Non-Paper: "Rare Exceptions" for Ballistic Missile Launches
June 4, 2009

- Since the Joint Data Exchange Center (JDEC) Memorandum of Agreement (MoA) and the Pre-Launch Notification System (PLNS) Memorandum of Understanding (MoU) were originally signed in 2000, the United States has determined that for national

security reasons, the "rare exceptions" provision is also necessary in the case of ballistic missile launches.

- Expanding the "rare exceptions" language to encompass also ballistic missiles would not at all undermine the basic objectives and purposes underpinning the JDEC and PLNS agreements.

- As with "rare exceptions" for space launch vehicle (SLV) launches, the United States believes both governments may require the flexibility on rare occasions to protect information related to certain ballistic missile launches. This exemption would apply equally on a reciprocal basis.

- The U.S. Government has recently reviewed and re-affirmed the military requirement for ballistic missile "rare exceptions."

- Originally, in negotiating the "rare exceptions" provision for space launch vehicles, neither the United States nor Russia exchanged any definitions, criteria, or lists of examples of the types of SLV launches that could fall under this provision.

-- Furthermore, neither the JDEC MoA nor the PLNS MoU required, or provided, any definitions, rationales, or lists of examples for SLV "rare exceptions."

-- During the original negotiations, both the United States and Russia recognized that there would be occasions when our respective SLVs might be carrying sensitive national security payloads that we would want to exempt from reporting/notifying on a "rare exception" basis.

- The U.S. proposal for amending the JDEC MoA and the PLNS MoU to permit "rare exceptions" for ballistic missiles is no different than the approach mutually accepted in the JDEC MoA and the PLNS MoU for "rare exceptions" regarding space launch vehicles.

- The United States has made several important clarifications regarding our proposal to extend the "rare exceptions" provision to ballistic missiles. Those clarifications are as follows:

-- First, the extension of the "rare exceptions" provision to ballistic missile launches under the JDEC MoA and the PLNS MoU would not change U.S. or Russian obligations under the 1991 START Treaty or the 1988 Ballistic Missile Launch Notification Agreement, including the launch notification obligations.

--- Paragraph 18 of the PLNS MoU specifically states: "This Memorandum, including its associated appendices, shall not infringe upon the rights and obligations of the Parties under other treaties or agreements."

--- The United States is not proposing any changes to the 1988 Ballistic Missile Launch Notification Agreement or any other launch notification obligations in other agreements, and will continue to adhere to its obligations under these agreements.

--- It is important to note that the definition of "ballistic missile" contained in the JDEC MoA and the PLNS MoU includes certain ballistic missile launches in addition to launches of ICBMs and SLBMs; for example, sounding rockets that meet the specified threshold parameters.

-- Second, the U.S. would never exercise the "rare exceptions" provision in the case of a ballistic missile launched in the direction of the Russian Federation that could be mis-interpreted as potentially a hostile launch.

- The purpose of the JDEC and PLNS agreements is to enhance transparency and confidence. The United States would not take actions that would undermine these fundamental objectives.

- As the language also states, the exceptions provision would be exercised only in "rare" instances.

- In a July 29, 2004, letter from Lt. Gen. Buzhinskiy of the Russian Ministry of Defense to then-Deputy Assistant Secretary of Defense John Rood, Russia agreed "in principle" to "rare exceptions" for ballistic missiles, but with two pre-conditions, that: (1) the U.S. provide Russia with a list of such "exceptional cases;" and (2) the text of the JDEC MoA is amended to provide that in "all cases of launches of missiles in the direction of the Russian Federation or the United States they are subject to notification."

- To address the first pre-condition in Gen. Buzhinsky's letter, the U.S. Department of Defense has prepared examples of such ballistic missile "rare exception" launches.

-- Examples of such "rare exceptions" could apply to categories of things such as the launch of: experimental vehicles; target boosters; or missile defense interceptors.

-- Any greater clarification in terms of providing a definition, criteria, or examples of the types of launch missions that could fall under the amended "rare exceptions" provision would, in effect, defeat the purpose underlying the national security rationale for exempting certain launches from the reporting and notification requirements in the JDEC and PLNS agreements.

- Additionally, the U.S. proposal on "rare exceptions" includes an offer to amend the JDEC and PLNS agreements to specify "(that neither Party shall exercise its "rare exceptions" right in the case of a ballistic missile if such a ballistic missile could be misinterpreted as flying in its direction with hostile intent(".

-- The U.S. draft diplomatic note that was provided to the government of the Russian Federation on May 19, 2009, proposed this amendment to both the JDEC MoA and the PLNS MoU. The United States believes such amendments satisfy Russia's second pre-condition.

- In summary, the United States believes that our clarification and proposal to amend the JDEC MoA fully satisfies Russian pre-conditions for accepting "rare exceptions" for certain ballistic missile launches.

END TEXT OF U.S. NON-PAPER.
CLINTON